

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CONSOLIDATED UNDER
CASE NO. 05-10155 PBS

YISEL DEAN, Independent Administratrix of the Estate of
STEVEN DEAN, deceased, and on behalf of all statutory
beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10155 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air
Express,
Defendants.

LISA A. WEILER, Administratrix of the Estate of SCOTT A. KNABE, deceased, and on behalf of all statutory beneficiaries,
Plaintiff,

V.

DOCKET NO: 05cv10364 PBS

RAYTHEON COMPANY, a Delaware corporation,
RAYTHEON AIRCRAFT COMPANY, a Kansas Corporation,
RAYTHEON AIRCRAFT CREDIT CORPORATION, a
Kansas Corporation, COLGAN AIR, INC., a Virginia
Corporation d/b/a US Air Express,
Defendants.

**DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF DEFENDANTS'
SUBSEQUENT REMEDIAL MEASURES**

The defendants respectfully request that this Court enter an order *in limine* precluding the plaintiffs from introducing evidence of any subsequent remedial measures taken by the defendants. In support hereof, defendants state as follows:

It is settled law in Massachusetts that the subsequent repair or taking of other safety measures after an accident is not admissible as proof of negligence or the existence of a defect. Martel v. MBTA, 403 Mass. 1, 4 (1988). The reason behind this exclusionary rule derives from public policy that a contrary rule would discourage owners from making repairs to dangerous property. See id. Therefore, post accident measures are not admissible to prove liability. See Menard v. Boston and Maine RR, 150 Mass. 386, 388 (1890); Hubley v. Lilly, 28 Mass. App. Ct. 468, 474 (1990).

Evidence of subsequent repairs or safety measure is admissible, at the discretion of the trial judge, in order to prove disputed issues other than negligence such as: (1) ownership or control of the premises; (2) the feasibility of giving adequate warnings; (3) the feasibility of safety improvements; or (4) knowledge of the danger at the time of the accident. See Liacos, Massachusetts Evidence, at §4.5, pages 185-187.

In the instant case, revisions to the maintenance manual have been made. Specifically, Figure 201, which depicts the placement of the trim drum, has been replaced by an improved representation of the part's positioning. Notwithstanding, the introduction of these issues is impermissible under the law, and would only serve to confuse and distract the jury from properly evaluating the facts of this case. The law is clear that as a matter of public policy subsequent remedial measures are inadmissible.

CONCLUSION

The defendants would be substantially prejudiced if the plaintiffs were allowed to introduce any evidence of subsequent remedial measures to the maintenance manual, and therefore, the defendants respectfully move that the plaintiffs be prohibited from introducing the same at trial.

RAYTHEON DEFENDANTS,
By Counsel,

/s/ Tory A. Weigand

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 19, 2007.

/s/ Tory A. Weigand

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